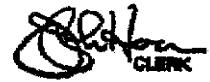


FILED

OCT 03 2005


Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

JUDGE - Lawrence L. Piersol
CASE NO. - CIV03-4146

REPORTER - Jerry May
Date - October 3, 2005
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CASE

James G. Abourezk, Jane Fonda, Roxanne
Dunbar-Ortiz,

Plaintiff,

vs.

Probush.com, Inc., Michael Marino, Ben Marino,

Ronald A. Parsons, Jr.
Kimberly J. Lanham

Defendant.

COURTROOM DEPUTY: Deb Peterson
TIME HEARING SCHEDULED TO BEGIN: 1:30 p.m.

TIME:

1:45 p.m. Enter pre-trial conference before the Hon. Lawrence L. Piersol, Chief Judge, Sioux Falls, SD. Counsel state their appearances for the record.

Counsel for Defendant indicates that they have a tentative settlement agreement with Plaintiff James Abourezk. It is not in writing but agreed to in principle.

The Court preliminarily indicates his thinking to counsel before arguments so they know where he is coming from before they argue their motions to the Court.

Attorney Epp argues in favor of Plaintiff Fonda's and Plaintiff's Dunbar-Ortiz' Motion for Summary Judgment.

Attorney Parsons argues in favor of Defendants' Motion for Summary Judgment and against Plaintiffs' Motion for Summary Judgment.

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Court states we are going to have a trial. Court notes it is currently set for Tuesday, November 1. The Court notes he has only one other case set for that same day, a criminal drug case. Court inquires as to possible settlement with either of the other two Plaintiffs. Attorney Epp responds. Attorney Epp indicates he will try to get ahold of Ms. Fonda in the next day or two regarding settlement. Court states that with regard to Ms. Dunbar-Ortiz, it looks like it may be a trial with regard to damages only, but that is not the same for Ms. Fonda. The Court states he can't state for sure, but it looks like this case will go to trial on November 1. The Court will let the parties know for sure as soon as he knows, but the parties should plan on going to trial on November 1.

Assuming Ms. Fonda is in with regard to liability, and then the Ms. Dunbar is in for damages, the Court asks how long the parties expect the case to go. Attorney Epp responds and states probably no more than two days. Neither side has any experts. Attorney Parsons states probably 1½ days at most. Court now inquires as to the parties if the case only proceeds with Ms. Dunbar-Ortiz, how long would the case take? Attorney Epp responds and states probably a day. Attorney Epp brings to the Court's attention one possible evidentiary issue regarding the disclaimer. Attorney Parsons agrees.

Attorney Epp inquires as to the Court as to if he requires a deadline for settlement before he begins the process of writing his opinion. The Court states if the parties are going to settle, it should be settled by October 12.

2:25 p.m. Court in recess.